Liability Issues and Sports Participants

Chapter 14

MANAGEMENT CONTEXT	MAJOR LEGAL ISSUES	RELEVANT LAW	ILLUSTRATIVE CASES
Oversight of sport/recreation program	Pleading a case in negligence	Elements of negligence Duty	*Davidson, Cope, Kennedy*
		Causation	*Bellinger*
	Defenses in negligence case	Negligence defenses	*Stevens*
		Government immunity	*Stahr*
		Charitable immunity	
Oversight of land opened for recreational use	Defining recreational use	Recreational use statutes	*Marcus*
Oversight of outdoor activities	Assume risks of activity outlined in statutes	Shared responsibility statute/sport safety acts	*Smith*
Supervision of activities/programs	Lack of supervision	Negligence law	*Garman, Trupia*
Administration of sport/recreation program			
Coaches, instructors	Improper instruction/training	Negligence law	*Scott*
Coaches, equipment managers, administrators	Provision of safe equipment	Negligence law	*Elledge, Bello*
Athletic trainers, team physicians, coaches, administrators	Medical care	Negligence law/Fraudulent concealment	*Krueger*
Administration of organized sport program	Liability for transportation	Negligence law	*Fenrich v. Blake School*
Game management	Violence by sport Participants	Criminal law	
Coaching	Assault		
League administration	Battery		
		Reckless misconduct	*Nabozny, Karas*
Provision of sports equipment	Liability for defective equipment	Products liability law	*DeRienzo*

Management Contexts, Relevant Laws, and Cases

General Principles of Negligence and Participants in Sport

The Law of Negligence

- Claim for relief based in tort law
- Conduct that falls below the standard of care established by the law to protect people from unreasonable risks
- An unintentional tort, opposite end of the spectrum from intentional torts such as assault and battery
- Defendant has acted carelessly or inadvertently, and concept of duty of care imposes liability if a person does not exercise reasonable care

Elements of Negligence

- Duty
- Breach of duty
- Causation
- Damages

Defenses Against Negligence

- Statute of limitations
- Act of God
- Contributory and comparative negligence
- Assumption of risk (primary and secondary)
- Recklessness as a defense
- Immunity

Defenses Related to Immunity

- Governmental immunity
- Charitable immunity
- Good Samaritan statutes
- Recreational use statutes
- Volunteer immunity statutes
- Sport and recreation safety acts

Participant Safety in Sport

Liability Issues Regarding Safety of Participants

- Lack of supervision
- Improper instruction or training
- Unsafe use or supervision of equipment
- Improper medical care
- Negligence in transportation
- Injuries due to defective products

Lack of Supervision Issues

Quality:

Is the supervisor competent to identify dangerous behavior, to intervene and stop it?

Quantity:

Is the ratio of supervisors to participants reasonable?

Competitive Advantage Strategies
Supervision

- Make sure all employees with supervisory responsibilities are competent to identify unsafe behaviors.
- Nonprofit Risk Management Center has a free app providing state laws applicable to volunteer liability.
- Develop supervisory plans that have an appropriate ratio of supervisors to participants.
- Develop supervisory plans that designate certain areas of the activity area for each supervisor.
- Make sure that all supervisors are trained to identify and stop rowdy behavior.

Issues Related to Improper Instruction or Training

- Selection and supervision of properly qualified instructors
- Suitable and adequate instruction
- Proper progression of skills
- Dissemination of safety rules and warnings
- Mismatch of opponents
- Unsafe use or supervision of equipment
- Improper medical care

Competitive Advantage Strategies Instruction and Training

Develop criteria to assess whether a person is competent to serve as an instructor or coach.

Have all instructors attend risk management workshops that cover the principles of safe instruction.

Make sure that specific risk information is shared with participants.

Emphasize the proper progression of activities or skills.

Discuss the dangers of mismatch based on size, maturity, or skill.

Legal Review

- Imagine that you are the supervisor of employees and volunteers overseeing children aged 10–13 attending a summer weekly sports camp.
- How will you make sure that all staff members and volunteers are adequately trained and supervised?
- What procedures can you put into place to ensure a fair matchup of opponents each time teams are put together?

Competitive Advantage Strategies Equipment Use

Provide equipment that is in good condition and maintain it properly.

Teach supervisors and participants how to check for equipment problems prior to each use.

Make sure equipment meets all pertinent specifications.

Give proper instruction on proper use of all equipment.

Issues Related to Medical Care for Athletes and Participants

- Preventive health concerns
- Emergency medical care
- Medical malpractice
- Fraudulent concealment

Some Health Concerns

Preventive health:

- Heart problems
- Eating disorders
- Concussion
- Preventing sudden deaths

Emergency medical care:

- Make sure qualified personnel are available.
- Have a clear protocol to make sure outside medical personnel can get to a site quickly.

Competitive Advantage Strategies
Medical Care

01

Make sure that one or more persons with first aid or CPR training are readily available.

02

Develop a protocol to contact outside medical assistance. Make sure employees understand it.

03

Give the team physician (not the coach) final authority to authorize an athlete to play.

04

Provide full disclosure to athletes regarding their injuries.

Legal Review

- Have you used the "no pain, no gain" adage when working out? Have you played while hurt or hidden an injury in order to get results?
- What was the result? Did you achieve success by pushing yourself, or did you regret it later?

Issues Related to Negligence in Transportation

1. Select competent drivers
2. Select a safe mode of travel
3. Properly maintain vehicles and records
4. Properly train drivers

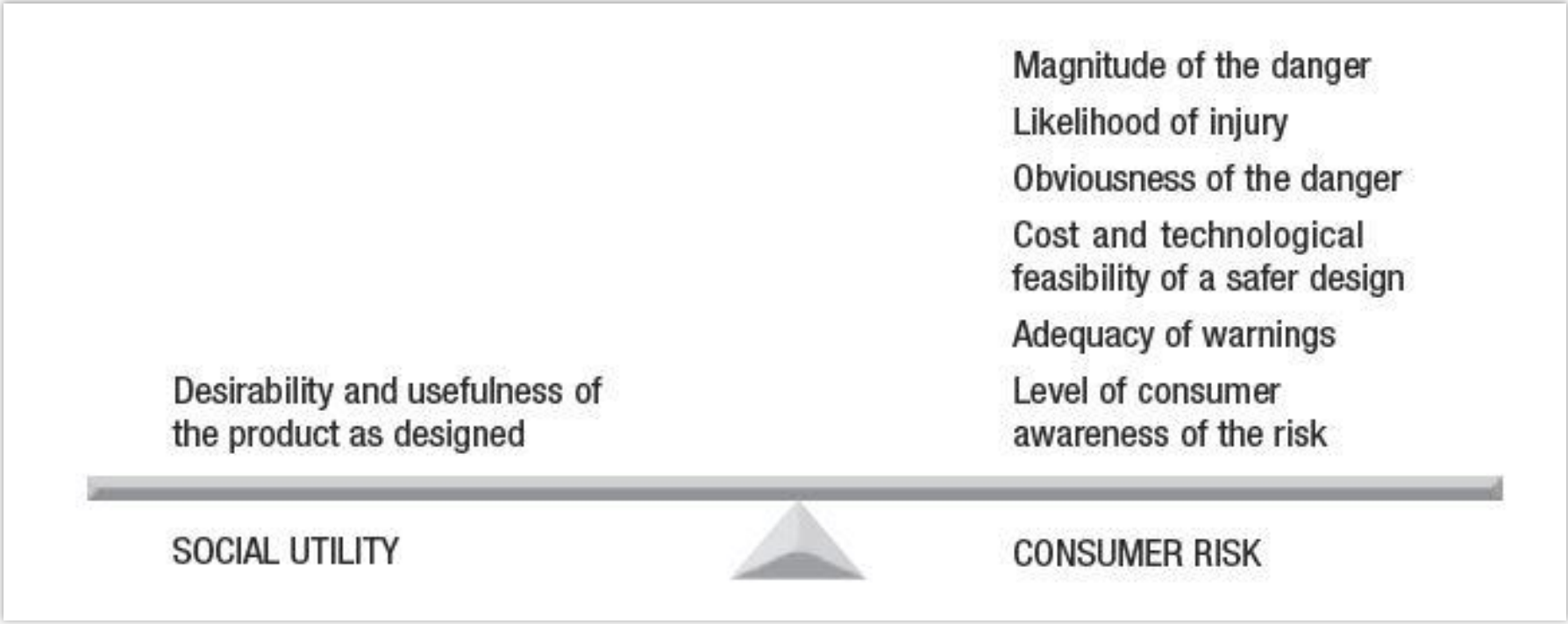
Competitive Advantage Strategies
Transportation

- Appoint a transportation coordinator.
- Ensure that drivers are properly credentialed.
- Have drivers obtain a certification in the vehicle they will operate.
- Use a qualified, paid driver when traveling further than 350 miles one way or late at night/overnight.
- Make sure passenger vans are not overloaded with passengers and equipment.

Products Liability

- Three potential claims
  - Negligence
  - Strict Liability
  - Breach of Warranty
- Types of product defects:
  1. Design
  2. Manufacturing
  3. Distribution
  4. Failure to Warn

Risk-Utility Balancing Test


Magnitude of the danger
Likelihood of injury
Obviousness of the danger
Cost and technological feasibility of a safer design
Adequacy of warnings
Level of consumer awareness of the risk
Desirability and usefulness of the product as designed
SOCIAL UTILITY
CONSUMER RISK

Possible Defenses to Negligent Product Liability Claims

The defect or failure to warn was not the proximate cause of the injury.

The plaintiff was contributorily negligent.

The plaintiff assumed any increased risk created by the defect beyond the inherent risk of the activity itself.

The danger was open and obvious.

The product was not in fact defective.

An adequate warning was provided.

Possible Defenses to Strict Liability Claims

- Unforeseeable misuse by the consumer
- Alteration of the product after it left the manufacturer's control
- Predictable deterioration of an aging product
- Provision of an adequate warning
- Secondary assumption of the risk by the consumer
- Social utility that outweighs the consumer risk

Competitive Advantage Strategies Product Liability

- Think twice about using reconditioned sports equipment.
- To protect sponsors that are also equipment manufacturers, use waivers that protect dual roles.
- Avoid advertising and packaging language such as “safe” or “foolproof.”
- Make sure employees are not buying equipment they know, or should know, is defective.

Participant Violence in Sport

Violence in Sports

A greater degree of violence is accepted in sport than in general society.

Incidents of violence are increasing in sport at all levels.

Sport and recreation administrators, managers, and coaches must set and enforce standards for civility.

Criminal Law vs. Civil Law

Criminal law deals with societal harms.

Civil law is concerned with individual wrongs.

The same behavior may result in both criminal and civil suits.

Criminal Actions and Sport Violence

- Criminal assault or battery statutes
- Relatively few cases brought to trial
  - Reluctant prosecutors
  - Hesitant juries who don't see athletes' behavior as "criminal"
  - Difficulty showing intent to cause harm
- Court system or professional sports leagues: Who should be addressing sport violence?

Legal Review

- Is the problem of sport violence best handled by professional sport leagues, or is it better addressed by the legislature or the courts?
- In your opinion, should Congress pass a federal Sports Violence Act to establish criminal sanctions for purposefully or knowingly causing injury to another during a sports contest?

The Torts Spectrum

- Civil liability for injuries resulting from intentional actions:
  - Individuals bring damage claims against one another (claims are based on torts)
- Tort claims are not all the same:

Negligent Behavior	**Reckless Misconduct/Gross Negligence/Willful Wanton Misconduct**	**Intentional Torts**
No intent to harm	No intent to harm but conscious indifference to risk	Intent to harm
Compensatory damages	Compensatory damages (generally)	Compensatory damages and punitive damages

Assault

Intentional Tort that involves menacing or threatening behavior, but no physical contact

Elements – Injured party must prove the following:

- **Intent to cause immediate harm**
- **Apprehension of immediate harm by the plaintiff**
- **Lack of consent**

Element of Consent often the crucial issue in a sport setting due to the physical nature of sports

Battery

Intentional Tort - Offensive contact where one intends to cause a harmful or offensive contact with another

Elements – Injured party must prove the following

- **Intent to cause harmful or offensive touching**
- **Harmful or offensive touching**
- **Lack of consent**

Privilege as a defense: Self Defense and Reasonable Force

Ascertaining Reasonableness of the Use of Force with Children

The age, sex, and condition of the child

The nature of the offensive conduct

Whether force was reasonably necessary to compel obedience to a proper command

Whether the force was disproportionate to the offense or likely to cause serious injury

Legal Review

- What are your thoughts on violence in sport?
  - What level of violence is permissible?
  - What types of aggression are necessary and intrinsic to the sport, and what types of contact are merely gratuitous violence?
- Why should members of society be offended by violent behavior when coaches and teams often reward violence?

Reckless Misconduct

Willful and wanton misconduct or gross negligence

Intentional tort has not been proven but injured party may still have a claim for Reckless Misconduct

Reckless disregard standard:

- Person knows the risk of harm created by conduct (extreme degree of risk)
- Person acts indifferent to the risk

Recklessness Standard for Most Participant v. Participant Injuries

- Middle ground between negligence and intentional torts
- Avoids flood of litigation that could limit sports opportunities
- Avoids unreasonable burdens on the free and vigorous participant in sports
- One benefit of athletic participation is youth development of discipline and self-control

Legal Review

- Should players be held legally liable for injuries they cause to other players as the result of excessive violence on the field, rink, or court?
- What is the distinction, in your opinion, between hard, enthusiastic play and going too far?
- Are these policy objectives the same for injuries to players by coaches? Why or why not?

Competitive Advantage Strategies
Prevention of Violence in Sport

Develop	Develop policies and practices setting forth zero tolerance for excessive violence.
Reward	Reward coaches for emphasizing skill rather than violence.
Educate	Hold preseason meetings for parents and players to educate and encourage good sportsmanship
Sanction	Sanction coaches and players who engage in bad sportsmanship and excessive violence.
Mentor	Encourage coaches and players to develop mentoring programs, to develop positive relationships.

Violent Actions Toward Sport Officials

- Increasing occurrences have led to states adopting criminal and civil statutes for assaulting sports officials
- Seriousness and increase of incidents leading states to elevate cases from misdemeanor to felony charges
- "Sports Rage" can be perpetrated by players, parents, coaches or fans.
- Often related to increasing violence in youth sports